

**PARTS 518—519 [RESERVED]****PART 520—SWEDEN****Subpart—General Income Tax**

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**Subpart—Withholding of Tax****§ 520.101 Introductory.**

(a) The tax convention and protocol between the United States and Sweden, referred to in this subpart as the convention, proclaimed by the President of the United States on December 12, 1939, and effective January 1, 1940, provides as follows:

**ARTICLE I**

The taxes referred to in this Convention are:

(a) In the case of the United States of America:

(1) The Federal income taxes, including surtaxes and excess-profits taxes.

(2) The Federal capital stock tax.

(b) In the case of Sweden:

(1) The National income and property tax, including surtax.

(2) The National special property tax.

(3) The communal income tax.

It is mutually agreed that the present Convention shall also apply to any other or additional taxes imposed by either contracting State, subsequent to the date of signature of this Convention, upon substantially the same bases as the taxes enumerated herein.

The benefits of this Convention shall accrue only to citizens and residents of the United States of America, to citizens and residents of Sweden and to United States or Swedish corporations and other entities.

**ARTICLE II**

An enterprise of one of the contracting States is not subject to taxation by the other contracting State in respect of its industrial and commercial profits except in respect of such profits allocable to its permanent establishment in the latter State. The income thus taxed in the latter State shall be exempt from taxation in the former State.

No account shall be taken, in determining the tax in one of the contracting States, of the mere purchase of merchandise effected therein by an enterprise of the other State.

The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.

**ARTICLE III**

When an enterprise of one of the contracting States, by reason of its participation in the management or capital of an enterprise of the other contracting State, makes or imposes on the latter in their commercial or financial relations conditions different from those which would be made with an independent enterprise, any profits which should normally have appeared in the balance sheet of the latter enterprise but which have been in this manner diverted to the former enterprise may, subject to applicable measures of appeal, be incorporated in the taxable profits of the latter enterprise. In such case consequent rectifications may be made in the accounts of the former enterprise.

**ARTICLE IV**

Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State is taxable only in the State in which registered. Income derived by such an enterprise from the operation of ships or aircraft

not so registered shall be subject to the provisions of Article II.

## ARTICLE V

Income of whatever nature derived from real property, including gains derived from the sale of such property, but not including interest from mortgages or bonds secured by real property, shall be taxable only in the contracting State in which the real property is situated.

## ARTICLE VI

Royalties from real property or in respect of the operation of mines, quarries, or other natural resources shall be taxable only in the contracting State in which such property, mines, quarries, or other natural resources are situated.

Other royalties and amounts derived from within one of the contracting States by a resident or by a corporation or other entity of the other contracting State as consideration for the right to use copyrights, patents, secret processes and formulas, trademarks and other analogous rights, shall be exempt from taxation in the former State.

## ARTICLE VII

1. Dividends shall be taxable only in the contracting State in which the shareholder is resident or, if the shareholder is a corporation or other entity, in the contracting State in which such corporation or other entity is created or organized; provided, however, that each contracting State reserves the right to collect and retain (subject to applicable provisions of its revenue laws) the taxes which, under its revenue laws, are deductible at the source, but not in excess of 10 per centum of the amount of such dividends. For the purposes of this Article the National income and property tax imposed by Sweden shall be deemed to be a tax deducted at the source.

2. Notwithstanding the provisions of Article XXII of this Convention, the provisions of this Article may be terminated by either of the contracting States at the end of two years from the date upon which this Convention enters into force or at any time thereafter, provided at least six months' prior notice of termination is given, such termination to become effective on the first day of January following the expiration of such six-month period. In the event the provisions of this Article are terminated, the provisions of—

(1) Article XIII (2), in so far as they relate to the special property tax imposed by Sweden upon shares in a corporation;

(2) Article XIV(b)(2), relating to the allowance of an additional deduction from taxes on dividends; and

(3) Article XVI, in so far as they relate to exchange of information with respect to dividends,

will likewise terminate.

## ARTICLE VIII

Interest on bonds, notes, or loans shall be taxable only in the contracting State in which the recipient of such interest is a resident or, in the case of a corporation or other entity, in the State in which the corporation or other entity is created or organized; *Provided, however*, That each contracting State reserves the right to collect and retain (subject to applicable provisions of its revenue laws) the taxes which, under its revenue laws, are deductible at the source.

## ARTICLE IX

Gains derived in one of the contracting States from the sale or exchange of capital assets by a resident or a corporation or other entity of the other contracting State shall be exempt from taxation in the former State, provided such resident or corporation or other entity has no permanent establishment in the former State.

## ARTICLE X

Wages, salaries and similar compensation and pensions paid by one of the contracting States or by the political subdivisions or territories or possessions thereof to individuals residing in the other State shall be exempt from taxation in the latter State.

Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

## ARTICLE XI

(a) Compensation for labor or personal services, including the practice of the liberal professions, shall be taxable only in the contracting State in which such services are rendered.

(b) The provisions of paragraph (a) are, however, subject to the following exceptions:

A resident of Sweden shall be exempt from United States tax upon compensation for labor or personal services performed within the United States of America if he fails within either of the following classifications:

1. He is temporarily present within the United States of America for a period or periods not exceeding a total of one hundred eighty days during the taxable year and his compensation is received for labor or personal services performed as an employee of, or under contract with, a resident or corporation or other entity of Sweden; or

2. He is temporarily present in the United States of America for a period or periods not exceeding a total of ninety days during the taxable year and the compensation received for such services does not exceed \$3,000.00 in the aggregate.

In such cases Sweden reserves the right to the taxation of such income.

(c) The provisions of paragraph (b) of this Article shall apply, *mutatis mutandis*, to a resident of the United States of America deriving compensation for personal services performed within Sweden.

(d) The provisions of paragraphs (b) and (c) of this Article shall have no application to the professional earnings of such individuals as actors, artists, musicians and professional athletes.

(e) The provisions of this Article shall have no application to the income to which Article X relates.

#### ARTICLE XII

Students or business apprentices from one contracting State residing in the other contracting State exclusively for purposes of study or for acquiring business experience shall not be taxable by the latter State in respect of remittances received by them from within the former State for the purposes of their maintenance or studies.

#### ARTICLE XIII

(1) If the property consists of:

(a) Immovable property and accessories appertaining thereto;

In the case of taxes on property or increment of property the following provisions shall be applicable:

(b) Commercial or industrial enterprises, including maritime shipping and air transport undertakings;

the tax may be levied only in that contracting State which is entitled under the preceding Articles to tax the income from such property.

(2) In the case of all other forms of property, the tax may be levied only in that contracting State where the taxpayer has his residence or, in the case of a corporation or other entity, in the contracting State where the corporation or other entity has been created or organized.

The same principles shall apply to the United States capital stock tax with respect to corporations of Sweden having capital or other property in the United States of America.

#### ARTICLE XIV

It is agreed that double taxation shall be avoided in the following manner:

(a) Notwithstanding any other provision of this Convention, the United States of America in determining the income and excess-profits taxes, including all surtaxes, of its citizens or residents or corporations may include in the basis upon which such taxes are imposed all items of income taxable under the revenue laws of the United States of America as though this Convention had not come into effect. The United States of Amer-

ica shall, however, deduct the amount of the taxes specified in Article I (b) (1) and (3) of this Convention or other like taxes from the income tax thus computed but not in excess of that portion of the income tax liability which the taxpayer's net income taxable in Sweden bears to his entire net income.

(b)(1) Notwithstanding any other provision of this Convention, Sweden, in determining the graduated tax on income and property of its residents or corporations or other entities, may include in the basis upon which such tax is imposed all items of income and property subject to such tax under the taxation laws of Sweden. Sweden shall, however, deduct from the tax so calculated that portion of such tax liability which the taxpayer's income and property exempt from taxation in Sweden under the provisions of this Convention bears to his entire income and property.

(2) There shall also be allowed by Sweden from its National income and property tax a deduction offsetting the tax deducted at the source in the United States of America, amounting to not less than 5 per centum of the dividends from within the United States of America and subject to such tax in Sweden. It is agreed that the United States of America shall allow a similar credit against the United States income tax liability of citizens of Sweden residing in the United States of America.

#### ARTICLE XV

With a view to the more effective imposition of the taxes to which the present Convention relates, each of the contracting States undertakes, subject to reciprocity, to furnish such information in the matter of taxation, which the authorities of the State concerned have at their disposal or are in a position to obtain under their own law, as may be of use to the authorities of the other State in the assessment of the taxes in question and to lend assistance in the service of documents in connection therewith. Such information and correspondence relating to the subject matter of this Article shall be exchanged between the competent authorities of the contracting States in the ordinary course or on demand.

#### ARTICLE XVI

1. In accordance with the preceding Article, the competent authorities of the United States of America shall forward to the competent authorities of Sweden as soon as practicable after the close of each calendar year the following information relating to such calendar year:

(a) The names and addresses of all addresses within Sweden deriving from sources within the United States of America dividends, interest, royalties, pensions, annuities, or other fixed or determinable annual

or periodical income, showing the amount of such income with respect to each addressee;

(b) Any particulars which the competent United States authorities may obtain from banks, savings banks or other similar institutions concerning assets belonging to individuals resident in Sweden or to Swedish corporations or other entities;

(c) Any particulars which the competent United States authorities may obtain from inventories in the case of property passing on death concerning debts contracted with individuals resident in Sweden or Swedish corporations or other entities.

2. The competent authorities of Sweden shall forward to the competent authorities of the United States of America as soon as practicable after the close of each calendar year the following information relating to such calendar year:

(a) The particulars contained in the forms delivered to the Swedish authorities in connection with the payment to individuals or corporations or other entities whose addresses are within the United States of America of dividends on shares in a corporation or participation certificates in cooperative societies, and interest on bonds or other similar securities;

(b) The particulars contained in permits accorded to individuals resident in the United State of America or to United States corporations or other entities to enable them to acquire for business purposes immovable property situated in Sweden;

(c) Any particulars which the central Swedish authorities may obtain from banks, savings banks or other similar institutions concerning assets belonging to individuals resident in the United States of America or to United States corporations or other entities;

(d) Any particulars which the central Swedish authorities may obtain from inventories in the case of property passing on death, concerning debts contracted with individuals resident of the United States of America, or United States corporations or other entities;

(e) A list of the names and addresses of all United States citizens resident in the United States of America who have made declarations to the Central Committee in Stockholm in charge of the taxation of taxpayers not resident in Sweden for purposes of the Swedish tax on income and property;

(f) Particulars concerning annuities and pensions, public or private, paid to individuals resident in the United States of America.

#### ARTICLE XVII

Each contracting State undertakes, in the case of citizens or corporations or other entities of the other contracting State, to lend assistance and support in the collection of the taxes to which the present Convention

relates, together with interest, costs, and additions to the taxes and fines not being of a penal character. The contracting State making such collection shall be responsible to the other contracting State for the sums thus collected.

In the case of applications for enforcement of taxes, revenue claims of each of the contracting States which have been finally determined shall be accepted for enforcement by the other contracting State and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes. The State to which application is made shall not be required to enforce executory measures for which there is no provision in the law of the State making the application.

The applications shall be accompanied by such documents as are required by the laws of the State making the application to establish that the taxes have been finally determined.

If the revenue claim has not been finally determined the State to which application is made may at the request of the other contracting State, take such measures of conservancy as are authorized by the revenue laws of the former State.

#### ARTICLE XVIII

The competent authority of each of the contracting States shall be entitled to obtain, through diplomatic channels, from the competent authority of the other contracting State, particulars in concrete cases relative to the application to citizens or to corporations or other entities of the former State, of the taxes to which the present Convention relates. With respect to particulars in other cases, the competent authority of each of the contracting States will give consideration to requests from the competent authority of the other contracting State.

#### ARTICLE XIX

In no case shall the provisions of Article XVII, relating to mutual assistance in the collection of taxes, or of Article XVIII, relating to particulars in concrete cases, be construed so as to impose upon either of the contracting States the obligation.

(1) to carry out administrative measures at variance with the regulations and practice of either contracting State, or

(2) to supply particulars which are not procurable under its own legislation or that of the State making application.

The State to which application is made for information or assistance shall comply as soon as possible with the request addressed to it. Nevertheless, such State may refuse to comply with the request for reasons of public policy or if compliance would involve violation of a business, industrial or trade secret or practice. In such case it shall inform, as

soon as possible, the State making the application.

ARTICLE XX

Where a taxpayer shows proof that the action of the revenue authorities of the contracting States has resulted in double taxation in his case in respect of any of the taxes to which the present Convention relates, he shall be entitled to lodge a claim with the State of which he is a citizen or, if he is not a citizen of either of the contracting States, with the State of which he is a resident, or, if the taxpayer is a corporation or other entity, with the State in which it is created or organized. Should the claim be upheld, the competent authority of such State may come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

ARTICLE XXI

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this Convention. With respect to the provisions of this Convention relating to exchange of information, service of documents and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected, minimum amounts subject to collection and related matters.

ARTICLE XXII

The present Convention shall be ratified, in the case of the United States of America, by the President, by and with the advice and consent of the Senate, and in the case of Sweden, by His Majesty the King, with the consent of the Riksdag. The ratifications shall be exchanged at Stockholm.

This Convention shall become effective on the first day of January following the exchange of the instruments of ratification and shall apply to income realized and property held on or after that date. The Convention shall remain in force for a period of five years and indefinitely thereafter but may be terminated by either contracting State at the end of the five-year period or at any time thereafter, provided at least six months' prior notice of termination has been given, the termination to become effective on the first day of January following the expiration of the six-month period.

In witness whereof the respective Plenipotentiaries have signed this Convention and have affixed their seals hereto.

Done in duplicate, in the English and Swedish languages, both authentic, at Wash-

ington, this twenty-third day of March, nineteen hundred and thirty-nine.

For the President of the United States of America:

SUMNER WELLES [SEAL]

For His Majesty the King of Sweden:

W. BOSTROM [SEAL]

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation, and the establishment of rules of reciprocal administrative assistance in the case of income and other taxes, this day concluded between the United States of America and Sweden, the undersigned Plenipotentiaries have agreed that the following provisions shall form an integral part of the Convention:

1. As used in this Convention:

(a) The term "permanent establishment" includes branches, mines and oil wells, plantations, factories, workshops, warehouses, offices, agencies, installations, and other fixed places of business of an enterprise but does not include the casual or temporary use of merely storage facilities. A permanent establishment of a subsidiary corporation shall not be deemed to be a permanent establishment of the parent corporation. When an enterprise of one of the contracting States carries on business in the other State through an employee or agent, established there, who has general authority to contract for his employer or principal, it shall be deemed to have a permanent establishment in the latter State. But the fact that an enterprise of one of the contracting States has business dealings in the other State through a bona fide commission agent, broker or custodian shall not be held to mean that such enterprise has a permanent establishment in the latter State.

(b) The term "enterprise" includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

(c) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "Swedish enterprise".

(d) The term "United States enterprise" means an enterprise carried on in the United States of America by a resident of the United States of America or by a United States corporation or other entity; the term "United States corporation or other entity" means a partnership, corporation or other entity created or organized in the United States of America or under the law of the United States of America or of any State or Territory of the United States of America.

(e) The term "Swedish enterprise" is defined in the same manner, mutatis mutandis, as the term "United States enterprise".

2. The term "corporation" includes associations, joint-stock companies, and insurance companies.

3. A citizen of one of the contracting States not residing in either shall be deemed, for the purpose of this Convention, to be a resident of the contracting State of which he is a citizen.

When doubt arises with respect to residence or with respect to the taxable status of corporations or other entities, the competent authorities of the two contracting States may settle the question by mutual agreement.

4. The provisions of Swedish law concerning the taxation of the undivided estates of deceased persons shall not apply where the beneficiaries are directly liable to taxation in the United States of America.

5. The term "life annuities" referred to in Article X of this Convention means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in consideration of a gross sum paid for such obligation.

6. The Swedish so-called "fees tax" (bevillingsavgift for vissa offentliga foreställningar) based on gross income in so far as it affects such individuals as actors, artists, musicians and professional athletes shall be deemed to be an income tax for the purposes of Article XIV (a).

The credit for taxes provided in Article XIV shall have no application to taxes deducted at the source from dividends and interest except to the extent provided in paragraph (b)(2) of that Article.

In the application of the provisions of this Convention the benefits of section 131 of the United States Revenue Act of 1938, relating to credits for foreign taxes shall be accorded but the credit provided for in Article XIV(a) shall not extend to United States excess-profits taxes nor to the surtax imposed on personal holding companies.

7. Citizens of each of the contracting States residing within the other contracting State shall not be subjected in the latter State to other or higher taxes than are imposed upon the citizens of such latter State.

8. The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers, nor to deny to either of the contracting States the right to subject to taxation its own diplomatic and consular officers.

9. The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

10. In the administration of the provisions of this Convention relating to exchange of information, service of documents, and mutual assistance in collection of taxes, fees

and costs incurred in the ordinary course shall be borne by the State to which application is made but extraordinary costs incident to special forms of procedure shall be borne by the applying State.

11. Documents and other communications or information contained therein, transmitted under the provisions of this Convention by one of the contracting States to the other contracting State shall not be published, revealed or disclosed to any person except to the extent permitted under the laws of the latter State with respect to similar documents, communications or information.

12. As used with respect to revenue claims in Article XVII of this Convention the term "finally determined" shall be deemed to mean:

(a) In the case of Sweden, claims which have been finally established, even though still open to revision by exceptional procedure;

(b) In the case of the United States of America, claims which are no longer appealable, or which have been determined by decision of a competent tribunal, which decision has become final.

13. As used in this Convention the term "competent authority" or "competent authorities" means, in the case of the United States of America, the Secretary of the Treasury and in the case of Sweden, the Finance Ministry.

14. The term "United States of America" as used in this Convention in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

15. Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement.

16. The present Convention and Protocol shall not be deemed to affect the exchange of notes between the United States of America and Sweden providing relief from double income taxation on shipping profits, signed March 31, 1938.

Done at Washington, this twenty-third day of March, nineteen hundred and thirty-nine.

SUMNER WELLES [SEAL]

W. BOSTROM [SEAL]

And where the said convention and the said protocol have been duly ratified on both parts and the ratifications of the two Governments were exchanged at Stockholm on the fourteenth day of November, one thousand nine hundred and thirty-nine;

And whereas, as is provided in Article XXII, the said convention shall become effective on the first day of January following the exchange of the instruments of ratification;

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United

States of America, have caused the said convention and the said protocol to be made public to the end that the same and every article, clause and part thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof on and from the first day of January, one thousand nine hundred and forty.

In testimony whereof, I have hereunder set my hand and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this twelfth day of December, in the year of our Lord one thousand nine hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

[SEAL]

FRANKLIN D ROOSEVELT

By the President:  
CORDELL HULL  
*Secretary of State.*

(b) The Internal Revenue Code provides in part as follows:

SEC. 22. GROSS INCOME.

\* \* \* \* \*

(b) *Exclusions from gross income.* The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

\* \* \* \* \*

(7) *Income exempt under treaty.* Income of any kind, to the extent required by any treaty obligation of the United States:

SEC. 62. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

**§ 520.102 Scope of this subpart.**

(a) The primary purposes of the convention, to be accomplished on a mutually reciprocal basis, are the avoidance of double taxation, exchange of fiscal information complementary to those provisions of the convention relating to avoidance of double taxation, and mutual assistance in the collection of the taxes to which the convention relates. The regulations in this subject deal primarily with the effect of the convention upon the determination of taxable income from sources within the United States of nonresident alien individuals resident in Sweden and of Swedish corporations and other Swedish entities, and with the information

to be made available to the Finance Minister of Sweden.

(b) The specific classes of income from sources within the United States exempt by reason of the convention from United States income tax are:

(1) Industrial and commercial profits of a Swedish enterprise having no permanent establishment in the United States (Article II);

(2) Income derived by a Swedish enterprise from the operation of ships or aircraft registered in Sweden (Article IV);

(3) Royalties and amounts derived by a nonresident alien individual resident in Sweden or by a Swedish corporation or other entity as consideration for the right to use copyrights, patents, secret processes and formulas, trade-marks and other analogous rights (Article VI);

(4) Gains derived from the sale or exchange of capital assets by a nonresident alien individual resident in Sweden, or by a Swedish corporation or other entity, having no permanent establishment in the United States (Article IX);

(5) Wages, salaries and similar compensation and pension paid by Sweden or by a political subdivision thereof to individuals (other than citizens of the United States) temporarily residing in the United States (Article X);

(6) Private pensions and life annuities paid to nonresident alien individuals residing in Sweden (Article X);

(7) Compensation for labor or personal services performed within the United States by a nonresident alien individual resident in Sweden, such exemption being, however, subject to the limitations set forth in Article XI of the convention and in § 520.113;

(8) Remittances from sources within Sweden (if and to the extent that they constitute gross income without regard to this convention) received in the United States by a nonresident alien individual resident of Sweden who is temporarily resident in the United States for the purposes of study or for acquiring business experience, such remittances being for the purposes of their maintenance or studies (Article XII).

(c) The convention does not affect the liability to United States income

tax of Swedish citizens resident in the United States except to the extent such citizens are entitled to the benefits of Article XIV of the convention. For the purposes of the convention, an individual resident in neither Sweden nor the United States and claiming the benefits of the convention as a citizen of Sweden shall be deemed to be a resident of Sweden if it is shown to the satisfaction of the Commissioner that he is such citizen. With respect to dividends and interest, see § 520.10.

(d) Except as to those items of income expressly exempted by the convention, the income tax liability of a nonresident alien individual resident of Sweden and of a Swedish corporation or other entity is determined in accordance with the provisions of the internal revenue laws of the United States and the regulations thereunder applicable generally to the taxation of nonresident alien individuals and foreign corporations.

(e) Except insofar as concerns dividends, the convention makes no reference to rates of taxation imposed by the United States.

#### **§ 520.103 Definitions.**

(a) Any word or term used in this subpart which is defined in the convention shall be given the definition assigned to such word or term in such convention. Any word or term used in this subpart which is not defined in the convention but is defined in the Internal Revenue Code shall be given the definition contained therein.

(b) As used in this subpart:

(1) The term “permanent establishment” includes branches, mines and oil wells, plantations, factories, workshops, warehouses, offices, agencies, installations and other fixed places of business of an enterprise but does not include the casual or temporary use of merely storage facilities. A Swedish parent corporation having a subsidiary corporation which latter corporation has a permanent establishment in the United States will not be deemed, by reason of such fact, to have itself a permanent establishment in the United States. A Swedish enterprise as defined in the convention carrying on business in the United States through an employee or agent, established in the

United States, who has general authority to contract for his employer or principal, shall be deemed to have a permanent establishment in the United States. However, business dealings in the United States by a Swedish enterprise through a bona fide commission agent, broker or custodian do not constitute a permanent establishment in the United States.

(2) The term “enterprise” means any commercial or industrial undertaking whether conducted by an individual, partnership, corporation or any other entity. It includes such activities as manufacturing, merchandising, mining, banking and insurance. It does not include the operation of, or the trading in, real property located in the United States. It does not include the rendition of personal services. Hence, a nonresident alien individual, a resident of Sweden, rendering personal services within the United States, is not merely by reason of such services, engaged in an enterprise within the meaning of the convention and his liability to Federal income tax is unaffected by Article II of the convention.

(3) The term “Swedish enterprise” means an enterprise carried on in Sweden by a nonresident alien individual resident in Sweden or by a Swedish corporation or other entity. The term “Swedish corporation or other entity” means a partnership, corporation or other entity created or organized in Sweden or under the laws of Sweden. For example, an enterprise carried on wholly without Sweden by a nonresident alien individual resident in Sweden is not a Swedish enterprise within the meaning of the convention.

(4) The term “industrial and commercial profits” means the profits arising from the industrial, mercantile, manufacturing or like undertakings of a Swedish enterprise as defined in this section. Such term does not include dividends, interest, compensation for labor or personal services, or income derived from real property or from any interest in such property, including rentals and royalties therefrom and gain from the sale or disposition thereof. Such latter items of income are not governed by the provisions of Article II but are subject to the rules elsewhere set forth in the convention and in this



subpart with respect to such specific items of income. As to gains from the sale or exchange of capital assets, see § 520.111.

**§ 520.104 Scope of convention with respect to determination of “industrial and commercial profits” of a nonresident alien individual resident of Sweden or of a Swedish corporation or other entity carrying on a Swedish enterprise in the United States.**

(a) *General.* Article II of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable in the other contracting State in respect of its industrial and commercial profits unless it has a permanent establishment in the latter State. Hence, a Swedish enterprise is subject to tax upon its industrial and commercial profits from sources within the United States only if it has a permanent establishment within the United States. From the standpoint of Federal income taxation, the article has application only to a Swedish enterprise and to the industrial and commercial income thereof from sources within the United States. It has no application, for example, to compensation for labor or personal services performed in the United States nor to income derived from real property located in the United States nor to any interest in such property, including rentals and royalties therefrom, nor to gains from the sale or disposition thereof nor to dividends and interest. Such latter items of income are treated separately elsewhere in the regulations in this subpart and are subject to the rules laid down in the sections having specific reference to the respective items of income: As to what is a “Swedish enterprise”, a “permanent establishment” and “industrial and commercial profits,” see § 520.103.

(b) *No United States permanent establishment.* A nonresident alien individual resident in Sweden or a Swedish corporation or other entity, carrying on a Swedish enterprise but having no permanent establishment in the United States is not subject to United States income tax upon industrial and commercial profits from sources within the United States. For example, if such Swedish corporation sells stock in

trade such as iron ore or wood pulp through a bona fide commission agent or broker in the United States, the resulting profit is, under the terms of Article II of the convention, exempt from United States income tax. Such Swedish corporation, however, remains subject to tax upon all other items of income from sources within the United States and not expressly exempted from such tax under the convention. However, see §§ 520.109, 520.111, 520.112 and 520.113.

(c) *United States permanent establishment.* A nonresident alien individual resident in Sweden or a Swedish corporation or other entity, carrying on a Swedish enterprise having a permanent establishment in the United States is subject to tax upon his or its industrial and commercial profits from sources within the United States. In the determination of the income of such resident of Sweden or Swedish corporation or other entity from sources within the United States, all industrial and commercial profits from sources within the United States shall be deemed to be allocable to the permanent establishment within the United States. The net income from sources within the United States, including the industrial and commercial profits, shall be determined in accordance with the provisions of section 119, Internal Revenue Code, and regulations thereunder. In determining such income, no account shall be taken of the mere purchase of merchandise effected in the United States by such Swedish enterprise.

**§ 520.105 Control of a domestic enterprise by a Swedish enterprise.**

Article III of the convention provides that if a Swedish enterprise by reason of its control of a domestic business imposes conditions different from those which would result from normal bargaining between independent enterprises, the accounts between the enterprises will be adjusted so as to ascertain the true net income of the domestic enterprises. The purpose is to place the controlled domestic enterprise on a tax parity with an uncontrolled domestic enterprise by determining, according to the standard of an uncontrolled enterprise, the true net income from

the property and business of the controlled enterprise. The convention contemplates that if the accounting records do not truly reflect the net income from the property and business of such domestic enterprise the Commissioner shall intervene and, by making such distributions, apportionments or allocations as he may deem necessary of gross income or deductions or of any item or element affecting net income as between such domestic enterprise and the Swedish enterprise by which it is controlled or directed, determine the true net income of the domestic enterprise. The provisions of Regulations 103 (26 CFR 1938 ed. Supps. 19.45-1), [Regulations 111 (26 CFR 1949 ed. Supps. 29.45-1) and Regulations 118 (§39.45-1, 26 CFR, Rev. 1953, Parts 1-79, and Supps.)] shall, insofar as applicable, be followed in the determination of the net income of the domestic business.

**§ 520.106 Income from operation of ships or aircraft.**

The income derived by a Swedish enterprise from the operation of ships or aircraft registered in Sweden is exempt from United States income tax. However, the profits derived by such enterprise from the operation of ships or aircraft not so registered are treated as are industrial and commercial profits generally. See Article II of the convention and § 520.104.

**§ 520.107 Income from real property.**

Income of whatever nature derived by a nonresident alien individual resident in Sweden or by a Swedish corporation or other entity from real property situated in the United States, including gains derived from the sale of such property, is not exempt from taxation by the convention. The treatment of such income for taxation purposes is governed by those provisions of the Internal Revenue Code applicable generally to the taxation of nonresident aliens and foreign corporations. Interest derived from mortgages or bonds secured by real property does not constitute income from real property within the meaning of the convention but is subject to the provisions applicable to interest generally. See Article VIII of the convention and § 520.110.

**§ 520.108 Mineral royalties.**

Royalties derived by a nonresident alien individual resident in Sweden or by a Swedish corporation or other entity from real property or in respect of the operation of mines, quarries, timber or other natural resources situated in the United States are not exempt from taxation under the convention. Such items of income are subject to taxation under the provisions of the Internal Revenue Code applicable generally to the taxation of nonresident aliens and foreign corporations.

**§ 520.109 Patent and copyright royalties.**

(a) Royalties and amounts derived from sources within the United States by a nonresident alien individual resident in Sweden or by a Swedish corporation or other entity (if such corporation or entity is not a resident of the United States) as consideration for the right to use copyrights, patents, secret processes and formulas, trademarks and other analogous rights are exempt from Federal income taxation under the provisions of Article VI of the convention. Such items are therefore not subject to the withholding provisions of the Internal Revenue Code. Such exemption does not, however, apply in the case of a Swedish corporation engaged in trade or business within the United States or having an office or place of business therein. Such corporation is a resident Swedish corporation and hence the provisions of Article XIV (a) are applicable.

(b) To obviate withholding of the tax at the source, the alien individual resident in Sweden or Swedish corporation or other entity should by letter, notify the payor of the income that such income is exempt from Federal income tax under the provisions of the convention. Such letter from such resident of Sweden shall contain his address and a statement that he is a resident of Sweden. The letter from such corporation or other entity shall contain the address of its office or place of business and a statement that it is a corporation or other entity organized under the laws of Sweden and shall be signed by an officer of the corporation or other entity giving his official title.

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The letter of notification of a copy thereof should be immediately forwarded by the recipient to the Commissioner of Internal Revenue, Withholding Returns Section, Washington 25, D.C., United States of America.

### § 520.110 Dividends and interest.

(a) In general dividends derived from sources within the United States by a nonresident alien individual resident in Sweden or by a Swedish corporation or other entity remain subject to taxation under the provisions of the Internal Revenue Code applicable generally to the taxation of nonresident alien individuals and foreign corporations. See Article XIV (a) of the convention. However, for a period of at least 2 years beginning on January 1, 1940, the tax in the case of such alien individual resident in Sweden or such Swedish corporation or other entity (nonresident as to the United States) shall not exceed 10 percent of the amount of such dividends. See Article VII of the convention. Hence, the higher rates applicable generally in the case of nonresident alien individuals subject to the provisions of section 211 (c), Internal Revenue Code, are not applicable to dividends received by nonresident alien individuals who are residents of Sweden.

(b) The taxation of interest derived from sources within the United States by a nonresident alien individual resident in Sweden or by a Swedish corporation or other entity is not affected by the convention except that in the case of such individual such interest is subject only to the rate of tax imposed by section 211 (a), Internal Revenue Code. Hence, interest, like dividends, is excluded for the purposes of section 211(c), from the gross amount of fixed or determinable annual or periodical income of nonresident alien individuals who are residents of Sweden.

### § 520.111 Capital gains.

Under Article IX of the convention, gain derived from the sale or exchange of capital assets (other than real property) within the United States by a nonresident alien individual resident in Sweden or by a Swedish corporation or other entity is exempt from Federal income tax unless such individual, cor-

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poration or other entity has a permanent establishment in the United States. With respect to real property, see § 520.107.

### § 520.112 Wages, salaries and similar compensation, pensions and life annuities.

(a) Under Article X of the convention, wages, salaries and similar compensation and pensions paid by Sweden or by a political subdivision thereof to individuals temporarily residing in the United States are exempt from Federal income tax. By reason, however, of the application of Article XIV(a) of the convention, such exemption does not apply to recipients of such income who are either citizens of the United States or aliens resident therein. As to who are resident aliens, see Regulations 103 (26 CFR 1938 ed. Supps. 19.211-2 to 19.211-4), [Regulations 111 (26 CFR 1949 ed. Supps. 29.211-2 to 29.211-4) and Regulations 118 (§§ 39.211-2 to 39.211-4, 26 CFR, Rev. 1953, Parts 1-79, and Supps.)]. As to the taxation generally of the compensation of employees of foreign governments, see section 116(h) of the Internal Revenue Code and Regulations 103 (26 CFR 1938 ed. Supps. 19.116-2), [Regulations 111 (26 CFR 1949 ed. Supps. 29.116-2) and Regulations 118 (§ 39.116-2, 26 CFR Rev. 1953, Parts 1-79, and Supps.)].

(b) Under the provisions of the same article of the convention, private pensions and life annuities derived from sources within the United States by nonresident alien individuals residing in Sweden are exempt from the Federal income tax. Such items of income are, therefore, not subject to the withholding provisions of the Internal Revenue Code. See paragraph 5 of the protocol to the convention as to what constitutes life annuities. See also § 520.109 with respect to patent and copyright royalties as to requirements necessary to avoid withholding of the tax at the source, which requirements are here also applicable.

### § 520.113 Compensation for labor or personal services.

(a) Article XI of the convention adopts the principle that compensation for labor or personal services, including compensation realized in the practice

of the liberal professions, is subject to tax only in the contracting State in which such services are rendered. Hence, in general such compensation derived by nonresident alien individuals residing in Sweden for services rendered in the United States is subject to Federal income tax. Such general rule is, however, subject to the following exceptions under the provisions of Article XI:

(1) Such nonresident alien individual is not subject to Federal income tax upon compensation for labor or personal services performed within the United States if the following conditions prescribed by subparagraph (2) (i) and (ii) of this paragraph are met.

(2) He is temporarily present in the United States for a period or periods:

(i) Not exceeding 180 days during the taxable year and his compensation is received for labor or personal services performed as an employee of, or under contract with, a resident of Sweden or a Swedish corporation or other entity; or

(ii) Not exceeding 90 days during the taxable year and the compensation received for such services does not exceed \$3,000 in the aggregate for such taxable year even though such compensation is paid by a United States resident or by a domestic corporation or other domestic entity.

(b) If, therefore, such nonresident alien individual (1) is temporarily present in the United States for a period or periods in excess of 90 days during the taxable year, or (2) receives more than \$3,000 in the aggregate during the taxable year for labor or personal services performed within the United States he is not exempt under paragraph (a)(2)(ii) of this section, and his right to exemption under the convention will depend on his meeting both tests prescribed under paragraph (a)(2)(i) of this section.

(c) These exceptions, however, do not extend to the professional earnings of actors, artists, musicians, professional athletes and those engaged in like activities. The professional earnings of such individuals resident in Sweden for services rendered within the United States are subject to the provisions of the Internal Revenue Code applicable

generally to the taxation of non-resident alien individuals.

#### § 520.114 Remittances.

Under Article XII nonresident alien individuals residents of Sweden who are temporarily residing in the United States exclusively for the purposes of study or acquiring business experience and receiving remittances from Sweden for the purposes of their maintenance and studies in the United States are exempt from Federal income tax upon such amounts if and to the extent that such amounts constitute gross income.

#### § 520.115 Scope of Article XIV.

(a) *General.* Article XIV (a) has an important bearing upon other articles of the convention. While many preceding articles provide in effect that items of income derived by citizens or residents of the United States or by domestic corporations from sources in Sweden are subject to tax only in Sweden, Article XIV(a) nevertheless permits the imposition of Federal income tax upon such income in the hands of such taxpayers. For example, Article V provides that income from real property, including gains derived from the sale or exchange of such property, shall be taxable only in the contracting State in which such property is situated. Hence, looking at such article without reference to Article XIV a United States citizen realizing such income from real property situated within Sweden would not be subject to Federal income tax upon such income. Article XIV(a), however, prescribes that, notwithstanding Article V or any other article of the convention, the Federal income tax may apply to all items of income without regard to other provisions of the convention and hence all items of income from sources within Sweden, regardless of their treatment in the articles dealing respectively with such items of income, must be included in gross income of United States citizens, residents and corporations for the purposes of the Federal income tax.

(b) *Credit for Swedish income taxes.* (1) Article XIV(a), for the purposes of avoidance of double taxation, further provides that a citizen or resident of the United States or a domestic corporation deriving income from sources

within Sweden shall be entitled to a credit against the Federal income tax liability for the amount of Swedish national income and property tax, including surtax, and for the Swedish communal income tax. Such credit is, however, subject to the limitations prescribed in section 131, Internal Revenue Code (relating to the credit for foreign taxes) in that it cannot exceed the same proportion of the tax against which the credit is taken which the taxpayer's net income from sources within Sweden bears to the entire net income, in the case of a taxpayer other than a corporation, or to the normal tax net income, in the case of a corporation, for the same taxable year.

(2) In the application of Article XIV(a), the provisions of section 131, Internal Revenue Code, are in general applicable. See paragraph 6 of the protocol to the convention.

**§ 520.116 Reciprocal administrative assistance.**

(a) By Article XV of the convention, United States and Sweden adopt the principle of exchange of information and assistance in the service of documents incident to the collection of taxes. It is agreed that such fiscal co-operation shall be carried out in accordance with the laws of the respective countries and hence only such information as is available to the Commissioner under the revenue laws may be used as a source from which to secure the information required to be submitted to the Finance Minister of Sweden.

(b) Pursuant to such principle, withholding agents shall, in the preparation of withholding returns, Form 1042, report on such returns, in addition to the items of income upon which tax has been withheld at the source, those items of income paid to a nonresident alien individual resident in Sweden or to a Swedish corporation or other entity upon which tax has not been withheld at the source. (See § 520.109.) Such return shall show the same information with respect to such items of income upon which tax has not been withheld at the source as is shown with respect to items of income upon which the tax has been withheld at the source.

(c) All information and correspondence relating to exchange of information and to service of documents may be transmitted by the Secretary directly to the Finance Minister of Sweden.

**§ 520.117 Information to be furnished in the ordinary course.**

(a) In accordance with the provisions of Article XVI (1) (a) and (b) of the convention, the Secretary shall forward to the Finance Minister of Sweden, Stockholm, Sweden, as soon as practicable after the close of the calendar year 1940 and of each calendar year thereafter during which the convention is in effect the following information relating to such preceding calendar year:

(1) The name and address of each person whose address as disclosed on Forms 1012 and 1042 is in Sweden deriving from sources within the United States dividends, interest, royalties, pensions, annuities, or other fixed or determinable annual or periodical income, showing the amount of such income with respect to such person.

(2) The name and address of each person whose address as disclosed by Forms 1000, 1087 and 1099 is in Sweden showing the amount of income set forth on such form with respect to each person.

(b) In accordance with the provisions of Article XVI(1)(c) of the convention, there shall likewise be forwarded any particulars which the Commissioner may obtain incident to the determination of estate tax liability of any decedent from inventories of assets of estates of decedents concerning debts contracted with individuals resident in Sweden or with Swedish corporations or other entities.

**§ 520.118 Information in specific cases.**

Under the provisions of Article XVIII of the convention and upon request of the Finance Minister of Sweden, made through diplomatic channels and subject to the provisions of Article XIX of the convention, the Secretary will furnish to the Finance Minister of Sweden particulars in case of any specific taxpayer who is a citizen of Sweden or a Swedish corporation or other entity, relating to the application of Swedish

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national income and property tax and the Swedish communal income tax. In the case of other specific taxpayers, the Secretary will give consideration to requests of the Finance Minister of Sweden with a view to furnishing similar information concerning such taxpayer.

### § 520.119 Mutual assistance in the collection of taxes.

Under the provisions of Article XXI of the convention, the Secretary of the Treasury and the Finance Minister of Sweden are authorized to prescribe rules with respect to those provisions of the convention relating to the exchange of information, service of documents, and mutual assistance in the collection of the taxes to which the convention relates. Such rules concerning matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected and related matters will be made the subject matter of a common agreement between the competent authorities of the two contracting States concerned and when consummated will be published.

## PART 521—DENMARK

### Subpart—Withholding of Tax

#### RELEASE OF EXCESS TAX WITHHELD AND REDUCTION IN RATE OF WITHHOLDING

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- 521.1 Introductory.
- 521.2 Dividends.
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### Subpart—General Income Tax

#### TAXATION OF NONRESIDENT ALIENS WHO ARE RESIDENTS OF DENMARK AND OF DANISH CORPORATIONS

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- 521.113 Students and apprentices; remittances.
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- 521.115 Credit against United States tax liability for Danish tax.
- 521.116 Reciprocal administrative assistance.
- 521.117 Claims in cases of double taxation.

AUTHORITY: 26 U.S.C. 62, 143, 144, 211, and 231.

### Subpart—Withholding of Tax

SOURCE: Treasury Decision 5692, 14 FR 1123, Mar. 12, 1949, unless otherwise noted. Redesignated at 25 FR 14022, Dec. 31, 1960.

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#### RELEASE OF EXCESS TAX WITHHELD AND REDUCTION IN RATE OF WITHHOLDING

### § 521.1 Introductory.

(a) The income tax convention between the United States and the Kingdom of Denmark, signed May 6, 1948, proclaimed by the President of the United States on December 8, 1948, and effective as to taxable years beginning after December 31, 1947 (referred to in this subpart as the convention), provides in part as follows:

#### ARTICLE I

(1) The taxes referred to in this Convention are: